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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL A. LOVE, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0802-CR-86
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0405-MR-00006

JUNE 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

Michael A. Love, Jr., pleaded guilty to Voluntary Manslaughter, a Class A felony, and Aggravated Battery, a Class B felony.[1] He was sentenced to the presumptive thirty-year term of imprisonment for the manslaughter conviction[2] and a consecutive seven-year sentence for the Class B felony Aggravated Battery conviction.[3]

Love on appeal asserts that it was error to impose consecutive sentences in light of the fact that the court found the mitigating and aggravating circumstances to be in balance. In a related argument, he also claims that the aggregate thirty-seven-year sentence was inappropriate given the nature of the offenses and the character of the offender.

Consecutive Sentences

In the sentencing statement, the trial court noted the following mitigating factors: Love pleaded guilty and admitted his responsibility, and had significant support from his family. With respect to aggravators, the court noted a criminal history but that it consisted of only two misdemeanors. The court rejected counsel's request to consider the manslaughter victim's sexual aggression as a mitigating circumstance stating that a cognizable response "is not to kill somebody." Tr. at 127. As to the aggravated battery

[1] The convictions arose out of a dispute involving sexual activity including a rejected sexual overture from Leon Woods. Love stabbed Woods causing his subsequent death. When he was leaving the premises, Love sensed someone coming up behind him. He lashed out in the dark stabbing Joseph Moffett in the arm and thigh.

[2] The sentencing statute, calling for presumptive sentences, in effect at the time of Love's crimes is applicable here even though his sentencing took place after the effective date of the new "advisory" sentence statute (I.C. 35-50-2-1.3). See Gutermuth v. State, 868 N.E.2d 427 (Ind. 2007).

[3] It may be noted that the seven-year sentence is three years less than the presumptive sentence for the Class B felony.

charge, the court observed that the injuries to Moffett "were not so grave" as to warrant a presumptive ten-year sentence. Tr. at 130.

The court imposed the sentences of thirty and seven years finding that the mitigating factors "balance out" with the aggravating factors. Tr. at 131. The court concluded by determining that "a consecutive sentence is absolutely appropriate in this case because there are two victims. . . ." Tr. at 132. (Emphasis added).

Love relies upon Marcum v. State, 725 N.E.2d 852 (Ind. 2000) in which our Supreme Court reversed consecutive sentences. There, the Court held that because the trial court found the aggravating and mitigating circumstances to be in balance, "there is no basis on which to impose consecutive terms." Id. at 864.

The case before us, however, differs. Here, after finding the aggravators and mitigators to be in balance for purposes of imposing sentences for the two offenses, the court found an additional free-standing factor, i.e. that there were multiple victims. No such determination was made in Marcum.[4]

Both crimes here are "crimes of violence" as defined in I.C. 35-50-1-2. That statute specifically authorizes consecutive sentences for such offenses. Despite having found the aggravating and mitigating circumstances to be in equipoise, by additionally noting that there were multiple victims involved in the convictions, the court sufficiently justified the imposition of the consecutive sentences. See O'Connell v. State, 742 N.E.2d

[4] The facts in Marcum indicate that there were two beating victims, one of whom died. The defendant was convicted of murder and attempted murder. The Supreme Court did not address the arguable multiple-victim basis for the consecutive sentences, presumably because the trial court did not rely upon that factor for its sentencing determination.

943 (Ind. 2001) (affirming consecutive sentences where the aggravators and mitigators were in balance but there were multiple victims). Our Supreme Court validated that scenario although remanding for a more specific sentencing statement. See also Truax v. State, 856 N.E.2d 116 (Ind. Ct. App. 2006) (affirming the imposition of consecutive sentences where there were multiple victims and the court found no aggravating or mitigating circumstances). We find no error in the imposition of consecutive sentences in this case.

Inappropriate Sentences

Love seeks a reduction of his aggregate sentence upon grounds that the trial court gave a lesser sentence upon the aggravated battery conviction, that Woods was the aggressor in the sexual confrontation with Love and was larger and heavier than the defendant, that he fully cooperated with the police, and that his criminal record was very minimal. Love, citing to Ind. Appellate Rule 7 (B) seeks our review in light of the nature of the offenses and the character of the offender.

In this regard it is important to reiterate that Love received the presumptive sentence for the voluntary manslaughter conviction and a sentence of three years less than the presumptive sentence for the aggravated battery charge. It appears that Love benefited greatly not only from his guilty plea which resulted in a reduction of the murder, attempted murder, and robbery charges but also from the actual sentences imposed.

Ind. App. Rule 7 (B) itself requires that we give "due consideration to the trial court's decision." Having done so, we conclude, in keeping with our earlier discussion of

the consecutive sentences, that the sentences are not inappropriate in light of the nature of the offenses and the character of the offender. See Major v. State, 873 N.E.2d 1120 (Ind. Ct. App. 2007), trans. denied; Simmons v. State, 814 N.E.2d 670 (Ind. Ct. App. 2004), trans. denied; and Vennard v. State, 803 N.E.2d 678 (Ind. Ct. App. 2004), trans. denied.

The judgment is affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.